



November 19, 2012

## **EX PARTE PRESENTATION**

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, DC 20554

Re: Ex Parte Presentation in WT Docket No. 12-70, Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands; ET Docket No. 10-142, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; and WT Docket No. 04-356, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing several meetings as follows:

- Telephone correspondence on Thursday, November 15, 2012 between Zachary Katz, Chief of Staff for Chairman Julius Genachowski and Jeffrey Blum, Senior Vice President and Deputy General Counsel for DISH.
- A meeting on Friday, November 16, 2012 with Louis Peraertz, Legal Advisor, Wireless, International, and Public Safety for Commissioner Mignon Clyburn. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel and Alison Minea, Corporate Counsel.
- A meeting on Friday, November 16, 2012 with Courtney Reinhard, Legal Advisor, Wireless for Commissioner Ajit Pai. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel and Alison Minea, Corporate Counsel.
- Telephone correspondence on Sunday, November 18, 2012 between Commissioner Jessica Rosenworcel and Al Mottur, outside counsel to DISH.
- A meeting on Monday, November 19, 2012 with David Goldman, Senior Legal Advisor for Commissioner Jessica Rosenworcel. Present on behalf of DISH were Jeffrey Blum,

Senior Vice President and Deputy General Counsel and Alison Minea, Corporate Counsel.

During the meetings, DISH stressed that it stands ready to inject much needed investment and competition into the wireless economy, but its ability to deploy services quickly will hinge on the Commission adopting final rules that keep the relevant technical standards in place. Specifically, DISH urged the Commission to adopt the out-of-band emissions ("OOBE") and inband power levels that were proposed in the *AWS-4 NPRM*, which would be consistent with existing industry standards.<sup>1</sup> DISH explained that any modification to these OOBE or in-band power levels would significantly endanger DISH's entry into the wireless market by needlessly introducing serious regulatory and technical obstacles into DISH's planned deployment.

DISH explained that any changes to its OOBE or in-band power levels will likely reopen the 3rd Generation Partnership Project ("3GPP") standard-setting process for the AWS-4 band. In June 2011, 3GPP approved Band 23 (2000-2020 MHz and 2180-2200 MHz), which is a critical foundation for DISH's wireless plans. And on November 13, 2012, 3GPP RAN4 delivered agreement of emission limits for Band 23, finally overcoming multiple objections from Sprint Nextel Corporation ("Sprint") over the course of a year. With this agreement, DISH is poised to rapidly enter the wireless market provided the Commission adopts commercially reasonable AWS-4 rules.

Contrary to Sprint's November 14 *ex parte* letter,<sup>2</sup> deviating from the emission limits or power levels proposed in *AWS-4 NPRM* poses a serious risk of delay, regardless of whether 3GPP decides to revise Band 23 through a "maintenance change" or start over with a new band. The now-complete Band 23 assumes an OOBE limit of 43+10log(P) dB at 2000 MHz and no restrictions on the maximum mobile transmit power levels, and altering either likely means 3GPP would revisit the standard. Sprint's assurance that a maintenance change to Band 23 is an "expeditious" process is not credible;<sup>3</sup> Sprint itself was able to challenge the completion of Band 23 for more than a year by objecting to a maintenance change and subsequently delaying Band 23 implementation. Among other things, 3GPP participants would be able to challenge the

<sup>&</sup>lt;sup>1</sup> Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 12-32, ¶ 33, 61 (rel. Mar. 21, 2012) ("*AWS-4 NPRM*").

<sup>&</sup>lt;sup>2</sup> See Letter from Marc S. Marin, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Dkt. Nos. 12-70, 04-356, ET Dkt. No. 10-142, at 2 (Nov. 14, 2012) (arguing that "once the Commission adopts AWS-4 service rules, 3GPP should be able to complete its work incorporating the Commission's decision into industry standards through the expeditious 3GPP 'maintenance change' process rather than more time-consuming processes").

<sup>&</sup>lt;sup>3</sup> *Id*.

revisions and cause delay by seeking further technical studies, on top of the ordinary work that 3GPP would need to undertake to change the band. If that were to occur, DISH's entire wireless venture would be jeopardized.

DISH explained that if the Commission adopts an OOBE limit of 43+10log(P) dB at 2000 MHz, does not alter authorized in-band power levels and otherwise keeps Band 23 in place, it would consider making additional public interest commitments.

\* \* \* \* \* \*

For the foregoing reasons, the Commission should immediately move forward with adoption of AWS-4 technical rules consistent with the NPRM and finally put the 40 MHz of the AWS-4 band into productive use.

Respectfully submitted,

/s/ Jeffrey H Blum Jeffrey H. Blum

cc: Zachary Katz
Louis Peraertz
David Goldman
Courtney Reinhard